

April 12, 2004  
FOR IMMEDIATE RELEASE

THIS IS NOT AN OFFICIAL  
STATEMENT OF THE COURT,  
BUT IS INTENDED SOLELY  
FOR THE CONVENIENCE OF  
THE PRESS.

---

IN THE SUPREME COURT OF THE STATE OF IDAHO

2004 Opinion No. 39

NERCO MINERALS COMPANY and	)	
NERCO DELAMAR COMPANY, now doing	)	
business as KINROSS DELAMAR	)	
COMPANY,	)	
	)	
Plaintiffs-Appellants,	)	
	)	Docket No. 29352
v.	)	
	)	
MORRISON KNUDSEN CORPORATION,	)	
and MORRISON KNUDSEN ENGINEERS,	)	
INC.,	)	
	)	
Defendants-Respondents.	)	

---

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Joel D. Horton, District Judge.

The judgment of the district court is affirmed.

Stoel Rives, LLP, Boise, for appellant, Nerco Minerals Co. Thomas A. Banducci argued.

Hawley, Troxell, Ennis & Hawley, Boise, for respondent, Morrison Knudsen Corp. Eugene A. Ritti argued.

---

This case came to the Idaho Supreme Court from the district court's entry of summary judgment, which is a decision prior to a full trial, in favor of Morrison Knudsen Corporation and Morrison Knudsen Engineers, Inc. (collectively "MK").

On August 6, 1996, Nerco Minerals Company and Nerco Delamar Company (collectively "Nerco") sued MK for relief stemming from the failure of a heap leach pad—heap leaching is a method used to salvage precious metals from low-grade ore—that MK designed for Nerco. At the district court level, Nerco asserted, among other

things, that MK failed to perform the contract, committed fraud, and committed professional malpractice.

MK asked the district court to decide Nerco's claims prior to going to full trial. The district court agreed to do so and decided in favor of MK because Nerco failed to sue within the proper amount of time. However, the district court ruled that Nerco did sue within the time frame allowed for its claim that MK failed to fulfill its contractual responsibilities to Nerco. Additionally, MK asked the district court to reconsider its ruling on the basis that Nerco's claim was a professional malpractice claim and not a failure to perform a contract claim and, thus, was too late. The district court agreed with MK's argument and ruled against Nerco's claim of failure to perform the contract.

Nerco appealed to this Court. On appeal, Nerco argued their lawsuit was filed in time because their claim relates to MK failing to perform the contract instead of professional malpractice. Additionally, Nerco argued their claim for fraud was filed in time.

This Court affirms the judgment of the district court granting summary judgment in favor of MK on statute of limitations grounds. Nerco's claim was properly characterized as a professional malpractice claim; thus, it was barred by the statute of limitations. Because Nerco had sufficient facts to know, or with the exercise of reasonable diligence, should have known of MK's alleged fraudulent concealment and fraudulent misrepresentation no later than July 1990, Nerco's fraudulent concealment and fraudulent misrepresentation claims are barred by the three-year statute of limitations.